



<u>Decision Ref:</u>	2019-0330
<u>Sector:</u>	Insurance
<u>Product / Service:</u>	Household Buildings
<u>Conduct(s) complained of:</u>	Misrepresentation (at point of sale or after) Dissatisfaction with customer service Mis-selling (insurance)
<u>Outcome:</u>	Partially upheld

LEGALLY BINDING DECISION OF THE FINANCIAL SERVICES AND PENSIONS OMBUDSMAN

Background

This complaint concerns a household insurance policy purchased in July 2014 through the Provider's website. The Provider against which this complaint is made is an intermediary which offered the Complainants a home insurance policy underwritten by a third party provider.

The Complainants' Case

The Complainants submit that they purchased the policy from the Provider on **17 July 2014** using its online platform. When selecting the 'claim free' period, there were options in the online dropdown list for 1 year, 2 years or 3 years. As the Complainants had received payment on a claim made two years and ten months prior to that date, they chose the '3 years' option as they say that it was *"the most accurate reflection of the time period since their previous claim arose"*.

The Complainants submit that they made a claim on this policy arising from a burglary at their property on **22 February 2015**, and that the Provider repudiated this claim based on an *"alleged non-disclosure"* of a material fact, namely *"a previous claim for flood damage"* that had occurred within the three year period prior to the purchase of the policy. In their submissions to this office, the Complainants contend that *"there was no intent to mislead"*

when they chose the '3 years' option and that *"this is at its height nothing more than an entirely innocent misunderstanding between the parties"*. The Complainants state in their submissions that their previous claim related to flood damage, and that this risk was excluded from their insurance policy with the Provider, as was common for properties in the vicinity of a named river, which had flooded in October 2011. They submit that their alleged non-disclosure related to a *"material fact which could not have influenced the judgment of a prudent underwriter in fixing the premium or determining to take the risk"* because the material fact at issue was excluded from the risk.

The Provider's Case

In its Final Response Letter, the Provider notes that before giving the Complainants a quotation, it asked them to accept its Disclosure Requirements including:

"In respect of the property being insured, you and anyone living in the home, in the last three years have:

- Not made more than one household insurance or liability claim (whether the claim was covered by the policy or not);*
- Not made a claim totalling more than €5,000;*
- No "open claim"*

And:

"The buildings have never suffered damage through flood nor is there a history of such damage in the area and are not within 100 metres of any lake, river, stream, canal, sea or any other body of water".

The Provider submits that the Complainants accepted its *"Disclosure Requirements, Assumptions and Terms of Business"* and paid for the policy in full on **17 July 2014**. It further submits that, on the same day, the Provider sent the Complainants a *"Welcome Pack"* by email, which included all the information the Complainants had entered in the online proposal form, along with a copy of the Disclosure Requirements, Assumptions and Terms of Business that they had agreed to before receiving their online quotation for insurance. The Provider states that the Complainants were asked to *"check the details and make sure they are correct"* and that the Provider *"gave them the opportunity to advise... if any of the information they provided... was incorrect"*.

The Provider contends that it issued a policy renewal notice to the Complainants on **20 July 2015**, but wrote to them again on **22 July 2015** to advise that the underwriters were revoking renewal terms after undertaking a review of the Provider's household book of

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business. The Provider stated that as a result of this review it was “*not in a position to offer renewal terms*” on the Complainant’s policy.

In response to the Complainants’ submission that the Provider was aware of their previous claim (because of the exclusion of flood cover from the policy), the Provider asserted:

“...we wish to confirm that this exclusion can be added to a policy if the underwriter feels that the property is at risk of flooding. It does not mean that they are aware of the client’s previous claim history”.

The Complaint for Adjudication

The complaint is that the Provider failed in its duty to the Complainants in the course of the sale to them of a policy of household insurance, insofar as the limited options made available to them on the Provider’s online platform to propose for insurance, led to the Complainants unwittingly omitting a “material fact” from their application (namely, that they had made a claim for flood damage during the previous three years in the amount of **€84,641.98**) which led to the policy subsequently being voided by the underwriter. The Complainants maintain that the Provider’s online process was inadequate and failed to ensure that they received all of the relevant information from the Provider, in order to make an informed decision to propose for cover.

As the materiality of the fact(s) that the Complainants submit they unwittingly omitted is a matter for the policy underwriter to determine and not the Provider against which this complaint is made, it will not be examined as part of this adjudication. The Provider is an “*intermediary*” and, as such, offered home insurance underwritten by a third party provider, the underwriter.

Evidence

The Provider’s Online Proposal Form

As part of its formal response, the Provider submitted screenshots of the online proposal form completed by the Complainants when they purchased the policy. The Provider submits that a proposer is required to select a ‘Claim Free’ period from a drop-down menu. The Complainants submit that they were given the option of 1, 2 or 3 years, and, as it had been two years and ten months since they had made a claim, they chose the 3-year option.

The Provider has clarified that the claim free period chosen at this juncture does not impact on its acceptance criteria, and that it is “*purely a rating factor*”.

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The Provider submits that its online proposal form requires a proposer to accept its "Disclosure Requirements, Assumptions and Terms of Business":

The screenshot shows a web form with the following fields: First Name, Surname, Email Address, Phone Number, and Date of Birth (with dropdown menus for month and year). Below these fields is a checkbox with the text: "I accept the Disclosure Requirements and Assumptions and Terms Of Business on which the quote and cover are based." A callout box points to this checkbox with the text: "Disclosure Requirements, Assumptions and Terms of Business checkbox. It's not possible to pass this page/get a quote without selecting this box." Below the checkbox is another checkbox: "Please send me details of other products including any special offers (see our Privacy Statement)". A "Next" button is located below the checkboxes. At the bottom of the form, there are links for "Terms of Business", "Terms of Use", "Privacy Statement", and "Fees". A footer note states: "regulated by the Central Bank of Ireland. Registered Office: Registered in Ireland Number: Calls may be recorded for training and verification purposes."

From the screenshot above, it is apparent that the Complainants were required to agree to the statement "I accept the Disclosure Requirements and Assumptions and Terms Of Business on which the quote and cover are based" by ticking a box before proceeding to the next page. The Provider submits that "It's not possible to pass this page/get a quote without selecting this box".

Policy Documents issued to the Complainants by the Provider which formed the basis of the contract of insurance

The Provider forwarded a welcome pack to the Complainants on **17 July 2014**, containing the Statement of Facts, Assumptions and Terms of Business:

“Failure to disclose all material information (i.e. information likely to influence the assessment and acceptance of your Proposal) or providing false information could result in one or more of the following actions:

- a) Your policy being cancelled;*
- b) Your policy being treated as null and void;*
- c) A claim not being paid;*
- d) Claims paid being recovered from you;*
- e) You become liable for additional premiums which the insurer reserves the right to collect; Terms and Conditions of the policy being amended”.*

“This Statement of Fact document contains all of the information provided by you in respect of your insurance risk and has been used to calculate your premium. Check the following information carefully. You should ensure it is accurate and let us know of any errors. If any of the information is different, the insurer reserves the right to amend the premium charged or to amend or withdraw cover”.

“Please ensure that you read the Assumptions and the Statement of Facts as failure to comply could invalidate this insurance”.

“The acceptance of this policy is based on the following assumptions. If you cannot meet them, please let us know immediately.

- a) In respect of the property being insured, you and anyone living in the home, in the last three years have:
 - (i) Not made more than one household insurance or liability claim (whether the claim was covered by the policy or not);*
 - (ii) Not made a claim totalling more than €5,000;*
 - (iii) No open claim.**
- j) The buildings have never suffered damage through flood nor is there a history of such damage in the area and are not within 100 metres of any lake, river, stream, canal, sea, or any body of water”.*

The Terms of Business also include information about the 'Cooling-Off Period':

"You have the right to withdraw from your policy, within a specified period, without penalty..... this period is 14 days from the inception date of your policy or the date you receive your policy documents, whichever is later".

Letter to the Complainants from the Provider dated 22 July 2015

"We wish to advise you that the underwriters are revoking renewal terms".

"The underwriter has undertaken a review of [the Provider's] household book of business and advised that [the Provider] is not in a position to offer renewal terms on the above household insurance policy".

Letter from the policy underwriter to the Complainants dated 29 July 2015

"We consider the non disclosure of this past loss and the non disclosure of past flooding at your property to be of material fact.

This information should have been disclosed to us. These facts would have rendered this risk materially different and would have resulted in our underwriters refusing to accept cover on this risk".

Letter from the Complainants to the underwriter dated 27 October 2015

"[The] alleged non-disclosure which is disputed is in any event a material fact which could not have influenced the judgement of a prudent underwriter in fixing the premium or determining whether to take the risk, the alleged non disclosed material fact being specifically excluded from the risk and within the knowledge of your company".

"Again it is necessary to restate that flood risk was specifically excluded from the policy of insurance provided by your company and therefore was a matter within your company's knowledge in any event".

Submission from the Complainants dated 28 September 2017

"[The Complainants'] previous claim in any event arose in respect of flood damage to their property and this risk was specifically excluded from [the underwriter's] policy of insurance".

“[The underwriter] has now sought not to discharge its obligations on foot of [the policy] and instead to void the policy on the basis of non-disclosure of a material fact. Please note that [the Complainants] did not fail to disclose a material fact they simply sought to complete the online application form provided..... to the best of their ability”.

“[The Complainants’] current claim being one arising from the risk of burglary is completely unrelated to the excluded risk under your policy of flood damage. Had [the Complainants’] current claim been one arising from flood damage and had such risk not been specifically excluded under [the policy] then it may have been a material fact and the issue between the parties been one of whether there had been a non-disclosure”.

“The purpose of the Application Form is so that [the underwriter] can obtain information from a potential customer so that [it] can decide whether to offer (or renew) the insurance product and to decide the price or other terms of the insurance to be offered to the consumer. Non-disclosure occurs where one party to a contract fails to disclose a fact [that is] considered material. It is accepted that every circumstance is material which would influence the judgement of a prudent underwriter in fixing the premium or determining whether to take the risk”.

“When [the Complainants’] insurance policy issued from [the underwriter] the ‘Endorsement and Exclusions’ section recorded ‘Exclusion of Flood Cover’. Therefore [the underwriter] did not provide flood cover..... [The Complainants’] alleged non-disclosure which is disputed is in any event a material fact which could not have influenced the judgement of a prudent underwriter in fixing the premium or determining whether to take the risk, the alleged non disclosed material fact being specifically excluded from the risk and within the knowledge of [the underwriter]”.

Final Response Letter issued to the Complainants by the Provider dated 20 October 2017

The Provider’s Final Response to the Complainants states that the Complainants had used the Provider’s online system on **17 July 2014** to obtain a quote for home insurance. The Provider contends that it offered the Complainants a quotation of “€388.44” based on the information they had entered on the online proposal form, and that the Complainants accepted the Provider’s “*Disclosure Requirements, Assumptions and Terms of Business*” before it offered them the quotation. The Provider submits that the Complainants “*paid for the policy in full by card*” at that time.

The Provider states that it forwarded a welcome pack to the Complainants the same day as they proposed for and paid for their policy, and that the pack included all information that

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the Complainants had provided *“along with a copy of the Disclosure Requirements, Assumptions and Terms of Business that they agreed to online”*. The Provider asked the Complainants to *“check the details and make sure they are correct”* and requested that they let the Provider know if any details were not correct. The Provider contends that the Complainants did not contact it to amend any of the details included in the welcome pack, but that it later discovered that the Complainants, based on the above mentioned information furnished to the Provider, *“did not meet two of the assumptions that they accepted”*.

The Provider submits that the Complainants were dissatisfied with the underwriter’s declinature of their claim under the policy following a burglary at their home, and its subsequent avoidance of the policy due to non-disclosure. The Provider states that the Complainants made a formal complaint in October 2017, submitting that they had disclosed all information that was requested and contending that the Provider was aware of their previous claim (because of the underwriter’s exclusion of flood cover on the policy).

Submission from the Provider dated 19 February 2019:

“The Disclosure Requirement contained a hyperlink which was highlighted for the client to tick and a pop-up box containing the full Disclosure Requirements was present. The Assumptions and Terms of Business also contained these hyperlinks for the client to click into and read in full”.

“The Duty of Disclosure, Assumptions and Terms of Business are hyperlinked. The client was required to accept these by selecting the tick box. Customers can click on the hyperlinks and view the full wordings of each. They are also sent in the Welcome Pack where we ask the customer to review the pack carefully and contact us if there are any queries”.

“... the client could have ticked the box without clicking on each [dynamic link] to review the full Disclosure Requirement, Assumptions and Terms of Business; however they must tick that they accept same before they can receive the quote as a customer cannot proceed without ticking the box and they would have been prompted in red writing to accept the Disclosure Requirement, Assumptions and Terms of business in order to proceed”.

“A client should not proceed without reading this information as this is confirming the terms applied to the contract of insurance”.

"[The Provider] is satisfied that this information was clearly visible for the client to read online prior to receiving the quotation".

"We do not act as a Tied Agent for the Underwriters.... [the Provider] is an intermediary and only offers home insurance underwritten by [the underwriter]"

Submission from the Provider dated 31 July 2019

In response to a request from this office for a screen shot of the "Declarations and Endorsements" section of the Provider's online platform, the Provider stated that it was unable to furnish a screen shot of this section from 2014, but forwarded a screen shot of the current "Declarations and Endorsement" page:

Declarations & Endorsements

The following important endorsements apply. Please take some time to read through carefully. In order to proceed, you will need to tick the acceptance box at the end of the endorsements.

MINIMUM SECURITY REQUIREMENTS CONDITION - E10
It is a condition precedent of liability under the Policy that:

1. the Home is fitted with the following security devices:
 - (i) All external doors are fitted with mortice deadlocks or deadlocking rim latches.
 - (ii) All French doors and/or patio doors are fitted with appropriate security locks.
2. whenever the Home is left unattended
 - (i) All doors and windows are closed and fastened
 - (ii) All door locks as stated above are in full and effective operation
 - (iii) All keys are removed from locks and kept in a secure place

The cover is otherwise subject to the terms conditions and exclusions of the policy wording

ALARM CLAUSE (B) - E2
Where the total Contents sum insured exceeds €150,000
We will not pay for any loss or damage by stealing or attempted stealing unless the intruder alarm system fitted to the Home is

1. in full and effective operation at all times when the Home is not occupied
2. for monitored alarms, your alarm must be connected directly to a central monitoring station
3. regularly (at least once in every 12 months) inspected and maintained by an bona fide alarm company and any defect remedied immediately
4. is in operation once you have retired for the night.

In addition You must tell Us immediately should

1. you receive written notice from the Gardai warning of the withdrawal of their services due to excessive false calls
2. the Local Authority, Garda or Courts impose any requirement under any Environmental legislation requiring modification of the alarm

The cover is otherwise subject to the terms conditions and exclusions of the policy wording.

Important Notes
The assumptions you have accepted and the information provided by you shall form the basis of the contract between you and the insurer. If you are unfortunate to have a claim, you choose to appoint its own builder or other expert to carry out any required work, and payment may be staged as work progresses with no more than 30% of the overall settlement amount being retained until all work and final inspection are complete.

Declaration
By proceeding you agree that you meet the assumptions and there are no material facts to be disclosed. You also confirm that you have read and accept the endorsements applicable to your policy and that you will advise us in the event of any alteration in the risk prior to, or after, the commencement of cover under the Policy.

Tick here to confirm you agree with the above Declaration.

Make Payment

The Provider has advised that this page "would have been displayed in a similar manner in 2014".

Telephone Calls

Recordings of telephone calls between the Complainants and the Provider were submitted by the Provider as part of its formal response to this Office.

There were a number of calls between the parties in **July 2015** relating to the policy underwriter's decision to revoke its offer of renewal to the Complainants. The Complainants were clearly upset by this decision, and contended that the Provider's online platform had not allowed them the "*opportunity to state anything*" when they were purchasing the policy. The Provider advised the Complainants that if they cancelled their policy before the renewal date, that a letter revoking the underwriter's offer of cover would not issue, but the Complainants did not wish to cancel their policy. The Complainants lodged a complaint with the Provider, stating that they required an "*exact reason*" for the underwriter's revocation of its offer of insurance to them.

On **29 July 2015**, the Provider telephoned the Complainants to advise them that the policy underwriter was sending them a registered letter stating that it was voiding their policy from inception, due to non-disclosure of a past claim. The First Named Complainant's unhappiness and distress at the circumstances is evident during this call.

Decision

During the investigation of this complaint by this Office, the Provider was requested to supply its written response to the complaint and to supply all relevant documents and information. The Provider responded in writing to the complaint and supplied a number of items in evidence. The Complainants were given the opportunity to see the Provider's response and the evidence supplied by the Provider. A full exchange of documentation and evidence took place between the parties.

In arriving at my Legally Binding Decision I have carefully considered the evidence and submissions put forward by the parties to the complaint.

Having reviewed and considered the submissions made by the parties to this complaint, I am satisfied that the submissions and evidence furnished did not disclose a conflict of fact such as would require the holding of an Oral Hearing to resolve any such conflict. I am also satisfied that the submissions and evidence furnished were sufficient to enable a Legally Binding Decision to be made in this complaint without the necessity for holding an Oral Hearing.

A Preliminary Decision was issued to the parties on **7 October 2019** outlining the preliminary determination of this office in relation to the complaint. The parties were advised on that date, that certain limited submissions could then be made within a period of 15 working days, and in the absence of such submissions from either or both of the parties, within that

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period, a Legally Binding Decision would be issued to the parties, on the same terms as the Preliminary Decision, in order to conclude the matter.

In the absence of additional submissions from the parties, within the period permitted, the final determination of this office is set out below.

During the investigation of this complaint by this Office, the Provider was requested to supply its written response to the complaint and to supply all relevant documents and information. The Provider responded in writing to the complaint and supplied a number of items in evidence. The Complainants were given the opportunity to see the Provider's response and the evidence supplied by the Provider. A full exchange of documentation and evidence took place between the parties.

In arriving at my Preliminary Decision I have carefully considered the evidence and submissions put forward by the parties to the complaint. Having reviewed and considered the submissions made by the parties to this complaint, I am satisfied that the submissions and evidence furnished do not disclose a conflict of fact such as would require the holding of an Oral Hearing to resolve any such conflict. I am also satisfied that the submissions and evidence furnished are sufficient to enable a Decision to be made in this complaint without the necessity for holding an Oral Hearing.

The Complainants make the argument that the Provider's online platform limited their ability to include all relevant information when they were proposing for home insurance, ultimately resulting in their policy being voided from inception by the underwriter due to "non-disclosure". It is important to note that the Provider, as the intermediary, is not responsible for the decision taken by the underwriter to void the policy, but it is responsible for its conduct relating to the sale of the policy which the Complainants purchased online through its website.

The Provider's online form required the Complainants to "agree" to its "Disclosure Requirements, Assumptions and Terms of Business" before receiving an online quotation. This agreement was evidenced by a "tick" of a single box to indicate that the Complainants accepted "the Disclosure Requirements, Assumptions and Terms of Business on which the quote and cover are based". The Provider submits that proposers "can click on the hyperlinks and view the full wordings of each". It is important to note that the Complainants were not required to open the hyperlinks that would have taken them to the list of assumptions, or disclosure requirements, before proceeding to receive their quotation for home insurance. The Complainants were also not required to agree to each individual assumption or to each disclosure requirement, nor to view the Provider's terms of business, in order to proceed with receiving their online quotation.

I cannot agree, given the importance of the assumptions and disclosure requirements when proposing for insurance, with the Provider's contention that *"this information was clearly visible for the client to read online prior to receiving the quotation"*. The Provider further states that a proposer *"should not proceed without reading this information as this is confirming the terms applied to the contract of insurance"*. The Provider has submitted that full details of the Declarations and Endorsements, agreed to by the Complainants after receiving their quotation on the Provider's online platform, were visible to the Complainants before they were required to agree to them. In light of its position that the onus was on the Complainants to familiarise themselves with everything they were required to agree to, the Provider's approach is inconsistent in this regard. Given that the Declarations and Endorsements were displayed in full for the Complainants to view before agreeing to them, I believe it was remiss of the Provider not to ensure that the very important *"Disclosure Requirements, Assumptions and Terms of Business"* were similarly displayed for the Complainants to view in advance of agreeing to them. I am of the view that the Provider did not act in the best interests of the Complainants when it required them to carry out a further step in order to view the aforementioned.

The Provider submits that it forwarded the welcome pack to the Complainants by email the same day that they purchased their home insurance policy from the Provider through its website. A copy of this pack was forwarded by the Provider as part of its formal response to this office and I note the *"Important Notes"* section on page 3 of the pack. In this section, the Provider lists the possible consequences of not disclosing material information or providing false information, which include non-payment of a claim and the policy being treated as null and void. This section also includes the following statement:

"Please ensure that you read the Assumptions and the Statement of Facts as failure to comply could invalidate this insurance".

I also note that a copy of the *"Assumptions"* was included in the pack, on page 6, and therefore I accept that the Complainants had the opportunity to review these assumptions before the policy inception date (**17 August 2014**). There is no evidence before me that the Complainants contacted the Provider during this time to amend their application details, and they should have done so at that point if the assumptions they had agreed to (as evidenced in the welcome pack) were incorrect or inaccurate. They did not notify the Provider that they had made a claim *"totalling more than 5,000"* in the previous three years, nor that the insured property had previously suffered *"damage through flood"*, despite having several weeks to do so prior to the policy inception date. The Complainants in fact had made a claim for flood damage at their property in **2011** in the amount of **€84,641.98**. The Complainants' submit that as the *"flood damage"* was excluded from the policy, the Provider was aware of previous flood damage at their property. It is important to note at this point that the Complainants were not advised of the policy exclusions

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during the online proposal process; the applicable policy exclusions were forwarded to the Complainants in the welcome pack, and there is no evidence that they were aware of the salient exclusion prior to receiving the welcome pack. I therefore cannot accept the Complainants' contention that the Provider was aware of previous flood damage at their property when it offered insurance to them. There is an onus on proposers to make full disclosure of material facts, and the Complainants' claim history was material to the Provider's decision to offer cover in this case, within criteria set by the underwriter.

The Provider advised the Complainants during a telephone call during **July 2015** that if they cancelled their policy before the renewal date, the letter revoking the underwriter's offer of cover would not issue. Had the Complainants' availed of this, it would have been recorded as a voluntary cancellation, and I acknowledge and welcome the Provider's attempt to assist the Complainants in not having their policy cancelled. However, the Complainants did not wish to cancel their policy, and it was subsequently voided by the underwriter.

In my view, the shortcomings of the Provider's online platform contributed to the Complainants' omission of certain facts from their online proposal form. The "*Disclosure Requirements, Assumptions and Terms of Business*" were not displayed in full before the Complainants received their quote and paid for the policy in full. In order to view these in full, the Complainants were required to click on a hyperlink in order to load and view the information. I do not accept that the Provider met its obligations under the Consumer Protection Code regarding the provision of information in this regard. In not displaying the information in full, the Provider required the Complainants to carry out an extra step to enable them to view it. Furthermore, the Provider's online platform allowed the Complainants to bypass viewing this information; they were able to proceed by simply ticking a box that indicated they agreed to the information that was not fully displayed. Given that the Provider had displayed the Declarations and Endorsements in full online for the Complainants to agree to, it is surprising that that the Assumptions were not displayed in a similar fashion, and I note the Provider's lack of consistency in this regard. The Complainants in particular, given their previous claim for flood damage, were disadvantaged by the fact that the Assumptions were not displayed in the same way as the Declarations and Endorsements.

I consider that the Provider's online proposal form does not go far enough in terms of meeting its requirements under the Consumer Protection Code, which states that a regulated entity must make full disclosure of all relevant material information in a way that seeks to inform the consumer, and that this is particularly important with regard to insurance, which is a contract of *uberrimae fidei* – one of utmost good faith, on both sides. According to McCarthy, J., (at pp.413-414 of his judgement in **Aro Road and Land Vehicles Limited v. The Insurance Corporation of Ireland [1986] I.R. 403.**):

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“...good faith requires candour and disclosure, not, I think, accuracy in itself, but a genuine effort to achieve the same thing using all reasonably available sources”.

The sources that were “*reasonably available*” to the Complainants at the time they proposed for insurance were those present on the Provider’s online platform, and I note the Complainants’ submission that they “*simply sought to complete the online application form provided.... to the best of their ability*”. I acknowledge that the Provider has amended its online platform in recent times, and that the Assumptions are now displayed in a scrolling menu which is clearly visible to proposers.

I accept that the Complainants did not disclose certain information as to their claim history when proposing for insurance online; they have not expressly stated that they reviewed the Provider’s Disclosure Requirements and Assumptions before agreeing to them, and, had they done so, it should have been apparent that their prior claim for flood damage would have been an issue. However, I also accept that the Provider’s online platform’s shortcomings at the time the Complainants were proposing for insurance were not helpful to them in making the relevant disclosures.

I am satisfied that the Provider made the Complainants aware of the Disclosure Requirements and Assumptions when it forwarded the welcome pack to them by email - the Provider asked the Complainants to “*check the details and make sure they are correct*” and “*gave them the opportunity to advise.... if any of the information they provided... was incorrect*”. The Complainants did not subsequently contact the Provider to clarify the position regarding their previous claim for flood damage at their home, but I am mindful that had they done so, the underwriter would have refused cover as the Complainants did not meet the underwriter’s criteria due to their claim history. This could have put the Complainants in the unfortunate position of having to explain a policy refusal to potential future insurers, and finding it more difficult to secure home insurance going forward.

Having regard to the particular circumstances of this complaint, and in particular the failings by the Provider that have been noted above, I am partially upholding this complaint and I direct the Provider to make a compensatory payment of €2,000 to the Complainants.

Conclusion

- My Decision pursuant to **Section 60(1)** of the **Financial Services and Pensions Ombudsman Act 2017**, is that this complaint is partially upheld on the grounds prescribed in **Section 60(2)(g)**.
- Pursuant to **Section 60(4) and Section 60 (6)** of the **Financial Services and Pensions Ombudsman Act 2017**, I direct the Respondent Provider to make a compensatory payment to the Complainants in the sum of €2,000 (two thousand euro) to an account of the Complainants' choosing, within a period of 35 days of the nomination of account details by the Complainants to the Provider. I also direct that interest is to be paid by the Provider on the said compensatory payment, at the rate referred to in **Section 22** of the **Courts Act 1981**, if the amount is not paid to the said account, within that period.
- The Provider is also required to comply with **Section 60(8)(b)** of the **Financial Services and Pensions Ombudsman Act 2017**.

The above Decision is legally binding on the parties, subject only to an appeal to the High Court not later than 35 days after the date of notification of this Decision.

GER DEERING
FINANCIAL SERVICES AND PENSIONS OMBUDSMAN

31 October 2019

Pursuant to **Section 62** of the **Financial Services and Pensions Ombudsman Act 2017**, the Financial Services and Pensions Ombudsman will publish legally binding decisions in relation to complaints concerning financial service providers in such a manner that—

- (a) ensures that—
 - (i) a complainant shall not be identified by name, address or otherwise,
 - (ii) a provider shall not be identified by name or address,and
- (b) ensures compliance with the Data Protection Regulation and the Data Protection Act 2018.